

MAIL ROOM  
Federal Communications Commission

DA 01-1337

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.606(b),  
Table of Allotments,  
Television Broadcast Stations and  
Section 73.622(b), Table of Allotments  
Digital Television Broadcast Stations  
(Hibbing, Minnesota)

MM Docket No. 01-116  
RM-10069

**NOTICE OF PROPOSED RULE MAKING****Adopted: June 6, 2001****Released: June 7, 2001**

Comment Date: July 30, 2001

Reply Comment Date: August 14, 2001

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by Duluth-Superior Area Educational Television Corporation ("Duluth"), an applicant for a construction permit for a new noncommercial educational television station to operate on NTSC channel \*18 at Hibbing, Minnesota.<sup>1</sup> Duluth requests the addition of DTV channel \*31 at Hibbing as a replacement for NTSC channel \*18 as specified in Duluth's pending application.

2. Duluth seeks to invoke the provisions outlined in the Commission's Public Notice ("*Public Notice*") released on November 22, 1999, DA 99-2605. In that *Public Notice* the Commission announced a window filing opportunity to allow persons with certain pending requests for new analog (NTSC) television stations to modify their requests.<sup>2</sup> In this case, Duluth

<sup>1</sup> By letter dated October 7, 1996, the Video Services Division notified Duluth that its application for channel \*18 at Hibbing was unacceptable. Subsequently, Duluth filed a Petition for Reconsideration or, In the Alternative, Waiver of the Cut-Off For Filing NTSC Television Applications and Request for a Waiver of the ATV Freeze. To the extent necessary, Duluth's Petition for Reconsideration is granted and its application for channel \*18, Hibbing, Minnesota, is returned to pending status.

<sup>2</sup> Specifically, the window was available for (1) amendments (other than channel changes) to pending applications for a new full-service NTSC television stations on channel 2-59; (2) petitions for rule making seeking a new channel below channel 60 for those applicants with pending applications for new full-service NTSC television stations on channels 60-69; (3) petition for rule making seeking a new channel below 60 for those applicants with pending applications for a new full-service NTSC television stations on channels 2-59 at locations inside of the "TV Freeze Areas"; and, (4) amendments to pending rule making petitions to amend the TV Table of Allotments to add NTSC

states that it is filing its petition pursuant to the provision in the *Public Notice* that affords an opportunity for the submission of petitions for rule making seeking a new channel by entities with pending applications for new full-service NTSC television stations on Channel 2-59 which propose locations inside designated "TV Freeze Areas". Duluth notes that the window also permitted the submission of amendments to pending Freeze Area NTSC applications to specify DTV operation. In support of its proposal, Duluth states that channel \*18 is no longer usable for NTSC purposes because of the allotment of channel 18 to KAWE-DT, at Bemidji, Minnesota. It also claims that digital operation on channel 18 would cause interference to KQDS-DT and KBJR-DT on adjacent channels (17/19, respectively). Duluth contends that channel \*31 is a preferable allotment for Hibbing since the current allotment, channel \*51, will ultimately be at the top of the DTV "core" of channels and could cause interference to other authorized services on channels 52 and above. Duluth states that Hibbing does not presently receive any noncommercial educational service of a Grade B signal quality or better.

3. We believe Duluth's proposal warrants consideration since the channel allotment will permit Duluth to replace its NTSC channel with a DTV channel. DTV channel \*31 can be allotted to Hibbing consistent with the criteria set forth in the Commission's *Public Notice* for requests for a DTV channel replacement for a NTSC channel allotment at coordinates (47-22-53 N. and 92-57-15 W.).<sup>3</sup> However, since the community of Hibbing is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal. We propose to add DTV channel \*31 with the following specifications:

State & City	DTV Channel	DTV power (kW)	Antenna HAAT(m)
MN Hibbing	*31	500.0	212

4. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Hibbing, Minnesota	13-, *18-	13-

5. We also seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, for the community listed below, to read as follows:

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television allotments.

The Commission stated in its *Public Notice* that petitions seeking a DTV allotment under these circumstances will be evaluated using the criteria for changing an initial DTV allotment set forth in Section 73.622(a) of the rules. Specifically, the channel may be in the range from 2 to 59, and DTV and NTSC stations must be protected by meeting the engineering criteria of Section 73.623(c) of the Commission's Rules.

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<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Hibbing, Minnesota	36, *51	*31, 36, *51

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before July 30, 2001, and reply comments on or before August 14, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Marcia Cranberg  
Arnold & Porter  
555 Twelfth Street, NW  
Washington, DC 20004-1202  
(Counsel for Duluth-Superior Area Educational Television Corporation)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b). See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not

be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Services Division  
Mass Media Bureau

Attachment: Appendix

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APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments,

pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.